

SCHEDULE 3

Construction products enforcement rules – Northern Ireland

PART 2

REQUIREMENTS RELATING TO CONSTRUCTION PRODUCTS

CHAPTER 2

Suspension notices and forfeiture

Suspension notices

6.—(1) When in relation to any construction products in respect of Northern Ireland an enforcement authority—

- (a) has reasonable grounds for suspecting that any offence under paragraph 3, 4 or 5 has been committed; or
- (b) considers that there are grounds for the service of a notice under this paragraph in accordance with paragraph 16 (grounds for service of notices),

the authority may serve a notice (“a suspension notice”) prohibiting the person on whom it is served, for such period ending not more than six months after the date of the notice as specified in the notice, from supplying the products without the consent of the authority.

(2) A suspension notice may also require that person to keep the authority informed of the whereabouts throughout that period of any of the products concerned.

(3) A suspension notice may include a requirement that any construction products to which it relates that have been made available on the market be recalled.

(4) Where a suspension notice has been served on any person in respect of any construction products, no further such notice may be served on that person in respect of the same products unless—

- (a) proceedings against that person for an offence in relation to the products under a provision of this Part of this Schedule (not being an offence under this paragraph);
- (b) procedures in relation to the products involving Member States or the Commission under Article 56 (procedure to deal at national level with construction products presenting a risk), 57 (Union safeguard procedure) or 58 (complying construction products which nevertheless present a risk to health and safety) of the EU Construction Products Regulation; or
- (c) proceedings for the forfeiture of the products under paragraph 9 (forfeiture),

are pending at the end of the period specified in the first-mentioned notice.

(5) A consent given by an enforcement authority for the purposes of sub-paragraph (1) may impose such conditions on the doing of anything for which the consent is required as the authority considers appropriate.

(6) Any person who contravenes a suspension notice shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Suspension notices: further provisions

7.—(1) A suspension notice served by an enforcement authority in respect of any construction products must—

- (a) describe the products in a manner sufficient to identify them;
- (b) set out the reasons why the authority considers the grounds described in paragraph 6(1) to be made out;
- (c) specify any requirement under paragraph 6(2) to keep the authority informed of the whereabouts of any of the products;
- (d) where the construction products are to be recalled, state the terms of the recall;
- (e) specify the day on which the notice is to come into force, and the duration of the notice; and
- (f) state that, and set out the manner in which, the person on whom the notice is served may appeal against the notice under paragraph 8 (suspension notices: appeals).

(2) A notice that is based on the ground in paragraph 16(6)(a) must, in order to allow the enforcement authority to comply with Article 21 of the RAMS Regulation, state that it shall not have effect until the end of the period of ten days beginning on the day after it is served, but this requirement does not apply if the circumstances leading to the issue of the notice are such that paragraph (3) of that Article permits a measure to be taken without a period of consultation.

(3) Where an enforcement authority serves a suspension notice in respect of any construction products, the authority shall be liable to pay compensation to any person having an interest in the products in respect of any loss or damage caused by reason of the service of the notice if—

- (a) no offence under paragraph 3, 4 or 5 has been committed in relation to the products;
- (b) none of the grounds for service of a suspension notice in paragraph 16 has been made out in relation to the products; and
- (c) the exercise of the power is not attributable to any neglect or default by that person.

(4) Any disputed question as to the right to, or the amount of, any compensation payable under sub-paragraph (3) shall be determined by arbitration.

Suspension notices: appeals

8.—(1) Any person having an interest in any construction products in respect of which a suspension notice is for the time being in force may apply for an order setting aside the notice.

(2) An application under this paragraph may be made—

- (a) to any magistrates' court in which proceedings have been brought in Northern Ireland—
 - (i) for an offence in relation to the products under any provision of this Part of this Schedule, or
 - (ii) for the forfeiture of the products under paragraph 9 (forfeiture);
- (b) where no such proceedings have been brought, by way of complaint to a magistrates' court.

(3) On an application under this paragraph, the court may make an order setting aside the suspension notice only if the court is satisfied that—

- (a) no offence under paragraph 3, 4 or 5 has been committed in relation to the products;
- (b) none of the grounds for service of a suspension notice in paragraph 16 has been made out in relation to the products; and
- (c) no procedures are pending in relation to the products involving Member States or the Commission under Article 56 (procedure to deal at national level with construction products presenting a risk), 57 (Union safeguard procedure) or 58 (complying construction

products which nevertheless present a risk to health and safety) of the EU Construction Products Regulation.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision to the county court, and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹⁾ (cases stated by magistrates' courts)).

(5) This paragraph is without prejudice to the operation of—

- (a) Article 21(4) (restrictive measures: withdrawal of measures after effective action) of the RAMS Regulation in respect of paragraph 16(6)(a);
- (b) Article 57(2), second sentence (Union safeguard procedure: national measure considered unjustified) of the EU Construction Products Regulation in respect of paragraph 16(6)(b); and
- (c) Article 58(4) (complying construction products which nevertheless present a risk to health and safety: evaluation of national measures by the Commission) of the EU Construction Products Regulation in respect of paragraph 16(6)(c).

Forfeiture

9.—(1) An enforcement authority may apply under this paragraph for an order for the forfeiture of any construction products on any of the grounds on which the enforcement authority may serve a suspension notice under paragraph 6(1) in relation to the products.

(2) An application under this paragraph may be made—

- (a) where proceedings have been brought in a magistrates' court for an offence in relation to some or any of the products under any provision of this Part of this Schedule, to that court;
- (b) where an application with respect to some or all of the products has been made to a magistrates' court under paragraph 8 (suspension notices: appeals) or under paragraph 22 (appeals against detention of products), to that court; and
- (c) in any other case by way of complaint to a magistrates' court.

(3) On an application under this paragraph the court may make an order for the forfeiture of any products only if it is satisfied that one or more of the grounds described in sub-paragraph (1) is made out in relation to the products.

(4) A court may infer for the purposes of this paragraph that one or more of the grounds described in sub-paragraph (1) is made out in relation to any products if it is satisfied that one or more of those grounds is made out in relation to products which are representative of those products (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this paragraph by a magistrates' court in Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision to the county court, and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (cases stated by magistrates' courts)).

(6) Subject to sub-paragraph (7), where any products are forfeited under this paragraph they shall be destroyed in accordance with such directions as the court may give.

(1) [S.I. 1981/1675 \(N.I. 26\)](#).

Status: This is the original version (as it was originally made).

(7) On making an order under this paragraph a magistrates' court may, if it considers it appropriate to do so, direct that the products to which the order relates shall (instead of being destroyed) be released to such person as the court may specify on condition that the person—

- (a) does not supply those products to any person otherwise than—
 - (i) to a person who carries on a business of buying products of the same description as those products and repairing or reconditioning them, or
 - (ii) as scrap (that is to say, for the value of materials included in the products rather than for the value of the products themselves); and
- (b) complies with any order to pay costs or expenses (including any order under paragraph 24 (recovery of expenses)) which has been made against that person in the proceedings for the order for forfeiture.

Duty of enforcement authority to give notice of suspension notices and forfeiture applications etc.

- 10.** An enforcement authority must give immediate notice to the Secretary of State of any—
- (a) suspension notice served by it in respect of any construction products;
 - (b) application made by it for an order for forfeiture of any such products; or
 - (c) other thing done in respect of any such products for the purposes of or in connection with paragraphs 6 to 9.